

REMARKS

Claims 1-23 are canceled. New claims 26-72 were previously presented (as 37-83) in parent Application No. 10/370,804 by preliminary amendment. Claims 24-72 are now pending. Claims 24-72 (previously 24, 25, and 37-83) were restricted in the parent Application (10/370,804). The restriction requirement is attached for the Examiner's convenience.

Examination and consideration of the application as amended is requested and allowance of claims 24-72 at an early date is solicited.

Respectfully submitted,

2 DECEMBER 2003
Date

By: Dean A. Ersfeld
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|--------------------------|-----------------|----------------|--|
| Interview Summary | Application No. | Applicant(s) | |
| | 10/370,804 | GERSTER ET AL. | |
| | Examiner | Art Unit | |
| | Rita J. Desai | 1625 | |

All participants (applicant, applicant's representative, PTO personnel):

(1) Rita J. Desai SEP 08 2003 (3) _____

(2) Mr. Ersfeld (4) _____

Date of Interview: 29 August 2003 Referred to _____

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.

If Yes, brief description: _____

Claim(s) discussed: 24-83.

Identification of prior art discussed: _____

9/29/03
DUE DATE(S) _____
ATTORNEY DAE
DOCKETED _____

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Restricted the claims. Elected claims 26-37 without traverse. Examiner canceled the non-elected claims.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Claims pending 24-83.

Restriction :-

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 24 and 25, drawn to intermediates (N-oxides) oxazolo or thiozolo quinoline compounds, classified in class 546 and various subclasses.
- II. Claims 26-36, drawn to method of treating wherein R3 and R4 form an aromatic ring, classified in class 514 and various subclasses.
- III. Claims 37-47, drawn to methods of treating wherein R3 and R4 form a hetero cyclic ring with one Nitrogen (naphthydrines), classified in class 544 and various subclasses.
- IV. Claims 48-66, drawn to compounds and method of treating compounds of formula I wherein R2 is a hetero ring and R3 and R4 also combine to form a hetero ring with one Nitrogen, (naphthydrines)classified in class 546, 514, 544 and various subclasses.
- V. Claims 67-83, drawn to compounds and method of treating wherein R3 and R4 together form a fused cycloalkyl ring, R1 is a S, O or Se, classified in class 546 and 514 and in various subclasses.

The inventions are distinct, each from the other because of the following reasons:

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Inventions I- V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have a different core. Invention I are N-oxides , Invention II is a method of treating wherein R2 and R3 form an aromatic ring, Invention III is a method of treating wherein R3 and R4 form a heterocyclic ring , Invention IV has R2 and R3 and R4 together, being hetero rings, and lastly group V has R3 and R4 together form a fused cycloalkyl ring.

Thus all the above compounds and methods of treating have a different core structure , which requires a separate database search and is burdensome to the PTO.

During a telephone conversation with Mr. Ersfeld on 8/29/03 a provisional election was made without traverse to prosecute the invention of Group II, claims 26-36. Applicants elected group II of the above restriction without traverse.

Claims 24,25, 37-83 have been cancelled since claims 26-36 have been found to be allowable over the prior art of record.

The priority date filing date of US 10/192,416 was given as 9/24/2001 and has been corrected by the examiner to 7/10/2002, as given in the PTO records.

Claims 26-36 are being allowed.

US 6323200 has claims drawn to the method of treating wherein R2 is a hetero ring .

US 6110929 has claims drawn to the compounds and pharmaceutical compositions of the same formula , not method of treating.

US 6440992 has claims drawn to the compounds of group III.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 703-305-1868. The examiner can normally be reached on Monday - Friday, 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Rotman can be reached on 703-308-4698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

A handwritten signature in black ink, appearing to read "R. Desai", with a long horizontal line extending from the bottom right of the signature.

Rita J. Desai
Primary Examiner
Art Unit 1625

R.D.
August 29, 2003